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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/500,036	02/01/2005	Roberto Avallone	Q90912	2244

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SUGHRUE MION, PLLC
2100 PENNSYLVANIA AVENUE, N.W.
SUITE 800
WASHINGTON, DC 20037

EXAMINER

HUGHES, DEANDRA M

ART UNIT PAPER NUMBER

3663

DATE MAILED: 07/21/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/500,036

Applicant(s)

AVALLONE ET AL.

Examiner

Deandra M. Hughes

Art Unit

3663

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 08 November 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-36 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☐ Claim(s) _____ is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☒ Claim(s) 1-36 are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

Election/Restrictions

1. Restriction is required under 35 U.S.C. 121 and 372.

This application contains the following inventions or groups of inventions which are not so linked as to form a single general inventive concept under PCT Rule 13.1.

In accordance with 37 CFR 1.499, applicant is required, in reply to this action, to elect a single invention to which the claims must be restricted.

Group I, claim(s) 1-24, drawn to an optical transmission system.

Group II, claim(s) 25-35, drawn to an optical repeater.

Group III, claim 36, drawn to a method for supervising an optical transmission system.

2. The inventions listed as Groups I-III do not relate to a single general inventive concept under PCT Rule 13.1 because, under PCT Rule 13.2, they lack the same or corresponding special technical features for the following reasons. Group I is directed to an optical transmission system with a supervisory unit disposed on a link. Group II is directed to a modulated optical repeater. Group III is directed to a method for supervising an optical transmissions system comprising an optical signal superimposed with a supervisory signal.

3. This application contains claims directed to more than one species of the generic invention of **Group I**. If applicant elects **Group I**, then applicant must further elect a species. These species are deemed to lack unity of invention because they are not so linked as to form a single general inventive concept under PCT Rule 13.1.

Each modulator combination is a species. The invention has three modulators. Each modulator can be one of the following (see applicant's specification for support):

- a. A traffic signal (pg. 16, line 3);
- b. Lithium niobate (pg. 21, line 12);
- c. Semiconductor modulator (pg. 21, line 12);
- d. Tunable bandpass filter (pg. 21, line 13);
- e. Magneto-optical variable attenuator (pg. 21, line 24);
- f. Co-propagating Raman Amplifier (fig. 12);

Applicant must identify a single type for each of modulator. For example, a species would encompass a 1st modulator that is a traffic signal, a 2nd modulator that is lithium niobate, and a 3rd modulator that is a tunable bandpass filter. Applicant must identify a **single** disclosed species for examination.

The following claim(s) are generic to **Group I**: claims 1-4, and 10-22.

4. Further, this application contains claims directed to more than one species of the generic invention of **Group II**. If applicant elects **Group II**, then applicant must further elect a species. These species are deemed to lack unity of invention because they are not so linked as to form a single general inventive concept under PCT Rule 13.1.

Each modulator combination is a species. The invention has three modulators. Each modulator can be one of the following (see applicant's specification for support):

- g. A traffic signal (pg. 16, line 3);
- h. Lithium niobate (pg. 21, line 12);
- i. Semiconductor modulator (pg. 21, line 12);

- j. Tunable bandpass filter (pg. 21, line 13);
- k. Magneto-optical variable attenuator (pg. 21, line 24);
- l. Co-propagating Raman Amplifier (fig. 12);

Applicant must identify a single type for each of modulator. For example, a species would encompass a 1st modulator that is a traffic signal, a 2nd modulator that is lithium niobate, and a 3rd modulator that is a tunable bandpass filter. Applicant must identify a **single** disclosed species for examination.

The following claim(s) are generic to **Group II**: 25-26 and 32-34.

Applicant is required, in reply to this action, to elect a single species to which the claims shall be restricted if no generic claim is finally held to be allowable. **The reply must also identify the claims readable on the elected species, including any claims subsequently added.** An argument that a claim is allowable or that all claims are generic is considered non-responsive unless accompanied by an election.

Upon the allowance of a generic claim, applicant will be entitled to consideration of claims to additional species which are written in dependent form or otherwise include all the limitations of an allowed generic claim as provided by 37 CFR 1.141. If claims are added after the election, applicant must indicate which are readable upon the elected species. MPEP § 809.02(a).

5. An attempt was made to contact the Attorney of Record. However, due to a Revocation of Power of Attorney (filed 11/08/2005) a specific point of contact was unavailable.

6. Applicant is advised that the reply to this requirement to be complete must include (i) an election of a species or invention to be examined even though the requirement be traversed (37 CFR 1.143) and (ii) identification of the claims encompassing the elected invention.

The election of an invention or species may be made with or without traverse. To reserve a right to petition, the election must be made with traverse. If the reply does not distinctly and specifically point out supposed errors in the restriction requirement, the election shall be treated as an election without traverse.


Should applicant traverse on the ground that the inventions or species are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the inventions or species to be obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds one of the inventions unpatentable over the prior art, the evidence or admission may be used in a rejection under 35 U.S.C.103(a) of the other invention.

7. Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Deandra M. Hughes whose telephone number is 571-272-6982. The examiner can normally be reached on M-F, 8:30am-5:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jack Keith can be reached on 571-272-6878. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Deandra M Hughes
Primary Examiner
Art Unit 3663